

**Agricultural Marketing Service, Science and Technology Division, Plant Variety
Protection Office, Washington, DC**

MEMBERSHIP BALANCE PLAN

1. Committee's Official Designation

Plant Variety Protection Board

2. Authority

Section 7 of the Plant Variety Protection Act of 1970 (the Act) (7 U.S.C. 2327) requires the renewal of a Plant Variety Protection Board (the Board). The Board is hereby established pursuant to Act and in accordance with the provisions of the Federal Advisory Committee Act (FACA), as amended, 5 U.S.C. App. 2.

3. Objectives and Scope of Activities

The Plant Variety Protection Board advises the Secretary concerning the adoption of rules and regulations to facilitate the proper administration of the Plant Variety Protection Act and make advisory decisions on all appeals from the examiner or Commissioner. The Board also advises the Secretary on any matters under the Regulations and Rules of Practice and on all questions under Section 44 of the Act, "Public Interest in Wide Usage" (7 U.S.C. 2404).

4. Points of View Needed for the Committee

The Plant Variety Protection Act provides for a Plant Variety Protection Board ("Board") to be appointed by the Secretary of Agriculture. The duties of the Board are to: (1) advise the Secretary concerning the adoption of rules and regulations to facilitate the proper administration of the Act; (2) make advisory decisions for the Secretary on appeals concerning decisions on applications by the PVPO and on requests for emergency public-interest compulsory licenses; and (3) advise the Secretary on any other matters under the rules and regulations.

Proper administration of the PVPA creates benefits when intellectual property rights (as provided for by the Act) stimulate plant breeding and investment by

seed producers and distributors. This ultimately increases domestic agricultural production and keeps consumer food and fiber prices the lowest in the world.

The Act provides that "The Board shall consist of individuals who are experts in various areas of varietal development covered by this Act." The Act also provides that the membership "shall include farmer representation and shall be drawn approximately equally from the private or seed industry sector and from the sector of government or the public". The Board consists of 14 members, each of whom is appointed for a 2-year period, with no member appointed for more than three 2-year periods. Nominations are made by farmers' associations, trade associations in the seed industry, professional associations representing expertise in seed technology, plant breeding, and variety development, public and private research and development institutions (13 members) and the USDA (one member).

Every effort will be made to ensure that the membership of Board is balanced, nevertheless, USDA recognizes that committee membership is not static and may change, depending on the work of the committee.

There are no specific requirements to form a quorum for a typical Board meeting.

5. Other Balance Factors

An effort will be made to provide a balance of points of view from a range of agricultural interests, as well as to appoint members from multiple regions of the USA. Also efforts will be made to insure that different commodity groups (vegetable, agronomic (i.e. corn, soybean, cotton, etc.) and potatoes) are represented by the membership.

Equal opportunity practices in accordance with USDA policies will be followed in all appointments to the Committee. To ensure that the recommendations of the Committee have taken into account the needs of the diverse groups served by USDA, membership shall include to the extent possible, individuals with demonstrated ability to represent minorities, women and persons with disabilities.

6. Candidate Identification Process

Solicitation of nominations will occur through the Federal Register process and through the announcement via communication to agricultural groups with interest in plant intellectual property issues. This process results in a cross-section of

interested and qualified individuals with demonstrated qualifications and experience to provide advice and decisions to the Secretary regarding the PVP Act, appeals to PVP Office findings and the regulations/rules of practice.

The balance for the PVP Board is determined by the Commissioner and the AMS Administrator. If any vacancies occur during the 2 year term of the Board they will remain unfilled until the next nomination cycle unless that vacancy results in complete loss of a representative group (farmer, seed industry or public sector) – in this case the vacancy would be filled by assessing the list of vetted nominees in consultation with the Secretary. The membership term limit for the Board is 3 consecutive 2 year terms with any new Board having a composition of 30-40% prior Board members and 60-70% new members so as to provide both continuity with prior Boards and insight/ideas from new members.

Once candidates have been identified, their names and background data are submitted to the USDA White House Liaison's office for vetting. The vetting process includes a background check to determine if any of the candidates have a conflict of interest that would prohibit them from serving on the committee due to criminal or ethical violations.

Candidates are further evaluated by USDA offices according to governing statutes, regulations and administration policy. Candidates will then be submitted for final recommendation(s) to the USDA Chief of Staff, who submits a list of candidates to the Secretary for appointment.

7. Subcommittee Balance

The PVP Board has had two subcommittees. The subcommittees were composed of some PVP Board members and subject experts with equal representation from the seed industry, farming, university, and USDA. Subcommittees are selected by the Plant Variety Protection Office Commissioner, in consultation with the AMS Office of General Counsel.

8. Other

9. Date Prepared or Updated

August 24, 2016

10. Legal Background

Section 5(b)(2) of the FACA requires "...the membership of the advisory committee to be fairly balanced in terms of the points of view represented and the functions to be

performed by the advisory committee.” The corresponding FACA regulations reiterate this requirement at 41 CFR § 102-3.30(c), and, for discretionary committees being established, renewed, or reestablished, require agencies to provide a description of their plan to attain fairly balanced membership during the charter consultation process with GSA (41 CFR § 102-3.60(b)(3)). The document created through this process is the Membership Balance Plan. The regulations further clarify that (1) the purpose of the membership balance plan is to ensure “that, in the selection of members for the advisory committee, the agency will consider a cross-section of those directly affected, interested, and qualified, as appropriate to the nature and functions of the advisory committee;” and (2) “[a]dvisory committees requiring technical expertise should include persons with demonstrated professional or personal qualifications and experience relevant to the functions and tasks to be performed.” (41 CFR § 102-3.60(b)(3)).

FACA mandates that Federal advisory committees be balanced in the points of view represented by the members, but leaves it to the discretion of each agency on how to do this. The FACA regulations offer guidance in achieving a balanced Federal advisory committee membership, which include considering:

- (i) The Federal advisory committee’s mission;
- (ii) The geographic, ethnic, social, economic, or scientific impact of the Federal advisory committee’s recommendations;
- (iii) The types of specific perspectives required, such as those of consumers, technical experts, the public at-large, academia, business, or other sectors;
- (iv) The need to obtain divergent points of view on the issues before the Federal advisory committee; and
- (v) The relevance of State, local, or tribal governments to the development of the Federal advisory committee’s recommendations.” (41 CFR § III of App. A to Subpart B)